



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of I.E., Office of the
Public Defender

CSC Docket No. 2019-1758

Discrimination Appeal

ISSUED: August 15, 2019

I.E., a Principal Clerk Typist with the Office of the Public Defender (OPD), represented by Brian Powers, CWA Local 1033, appeals the determination of the OPD, which found that the appellant did not present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, on January 7, 2019, the appellant, an African-American female, filed a complaint with the Equal Employment Opportunity/Affirmative Action Officer (EEO/AA), alleging that B.M., an Executive Assistant 2, discriminated against her on the basis of race. Specifically, the appellant alleged that B.M. made the comment “[C.C.] has a degree and is white so G.H. may promote her over you.” The EEO/AA investigated the matter and found that the statement was made, but it did not rise to the level of racial discriminatory animus. Therefore, it did not substantiate a violation of the State Policy. However, in an effort to ensure adherence to the State Policy, B.M. was required to review the State Policy with the EEO/AA.

On appeal, the appellant questions how the statement “[C.C.] has a degree and is white so G.H. may promote her over you” does not violate the State Policy. In this regard, she states that this evidences that there is some belief in her workplace that white people get preferential treatment. As such, the appellant questions how this would be addressed if this plain language of racism is not recognized as a violation of the State Policy.

In response, the EEO/AA states that it interviewed four witnesses and found that the appellant and B.M. enjoyed a close working relationship during the six years that they worked together. In this regard, B.M. spoke highly of the appellant, that she and the appellant were friends, and that the appellant was an exemplary employee. The investigation also found that C.C. was hired in July 2018 to work in OPD's General Services after an intensive interview process conducted by B.M. and the appellant. After C.C. was hired, B.M. was responsible for training her and the appellant requested to work independently at that time. Toward the end of August 2018, the appellant and B.M. were discussing the appellant's progress in training, in anticipation of her promotion. At this time, B.M. stated "[C.C.] has a degree and is white so G.H. may promote her over you." After the appellant expressed her shock to B.M. for making the statement, B.M. immediately apologized. The EEO/AA states that words without context may be interpreted in different ways. Thus, since the appellant and B.M. were close friends, there was no evidence of animosity between them, and that the statement was relayed in the context of a collegial relationship, not that of a supervisor to subordinate, the EEO/AA determined that while the statement was in poor taste, it did not rise to the level of discriminatory animus required to violate the State Policy.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.

N.J.A.C. 4A:7-3.1(b) states that it is a violation of the State Policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set for in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Additionally, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

In the instant matter, the Civil Service Commission (Commission) has conducted a review of the record and finds that the appellant established a violation of the State Policy. In particular, the EEO/AA's investigation found that M.B. made the statement "[C.C.] has a degree and is white so G.H. may promote her over you." While the EEO/AA maintains that this does not rise to the level of discriminatory animus required to substantiate a violation of the State Policy, essentially due to

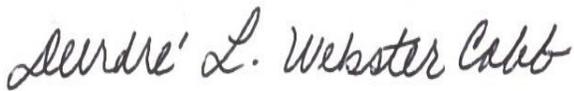
lack of intent because M.B. and the appellant are friends and have enjoyed a positive working relationship, M.B.'s intent is irrelevant. Rather, the proper inquiry is whether a supervisor expressing to an African-American female subordinate that she may not get promoted in favor of a Caucasian is a derogatory reference to the appellant's protected class. The Commission finds that such a statement is a derogatory reference. Therefore, the statement is a violation of the State Policy. However, the EEO/AA has indicated that M.B. received training to ensure that she adheres to the State Policy. Thus, while the Commission finds that M.B. violated the State Policy, the Commission also finds that appropriate, corrective action was taken against M.B. Accordingly, based on the record in this matter, the Commission finds that the corrective action taken was the appropriate action, and no further action is warranted.

ORDER

Therefore, it is ordered that this appeal be granted, but no further action is required.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON THE
14TH DAY OF AUGUST, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: I.E.
Brian Powers
Renee-Herron-McKithen

Mamta Patel
Records Center